

IN THE SENATE

SENATE BILL NO. 1411, As Amended

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO THE CONTROL AND SITING OF EXTRA LARGE POULTRY AND SWINE CONFINED ANIMAL FEEDING OPERATIONS; AMENDING TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 40, TITLE 25, IDAHO CODE, TO ESTABLISH THE POULTRY ENVIRONMENTAL CONTROL ACT, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS AND PURPOSES, TO DEFINE TERMS, TO PROVIDE FOR PERMITS, TO PROVIDE FOR PERMIT APPLICATIONS, TO PROVIDE FOR APPLICATION FEES, TO PROVIDE FOR EXISTING POULTRY OPERATIONS, TO PROVIDE FOR PERMIT CONDITIONS, TO PROVIDE SPECIFIC PERMIT CONDITIONS FOR EXTRA LARGE AND LARGE POULTRY OPERATIONS, TO PROVIDE FOR PERMIT AMENDMENTS, TO PROVIDE FOR THE TRANSFER OF PERMITS, TO PROVIDE FOR NUTRIENT MANAGEMENT RECORDKEEPING, TO PROVIDE FOR FEES TO BE COLLECTED FOR PERMITTED POULTRY OPERATIONS, TO PROVIDE FOR DESIGNATION, TO AUTHORIZE RULEMAKING, TO PROVIDE FOR VIOLATIONS, TO PROVIDE FOR REVOCATION OF PERMITS, TO PROVIDE FOR CIVIL PENALTIES, TO PROVIDE FOR FINANCIAL ASSURANCES FOR LARGE POULTRY OPERATIONS AND FOR EXTRA LARGE POULTRY OPERATIONS, TO PROVIDE THAT CERTAIN RECORDS SHALL BE SUBJECT TO PUBLIC DISCLOSURE, TO PROVIDE FOR SEVERABILITY AND TO PROVIDE FOR CONFLICTS; AMENDING TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 41, TITLE 25, IDAHO CODE, TO ESTABLISH THE SWINE ENVIRONMENTAL CONTROL ACT, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS AND PURPOSES, TO DEFINE TERMS, TO PROVIDE FOR PERMITS, TO PROVIDE FOR PERMIT APPLICATIONS, TO PROVIDE FOR APPLICATION FEES, TO PROVIDE FOR EXISTING SWINE OPERATIONS, TO PROVIDE FOR PERMIT CONDITIONS, TO PROVIDE SPECIFIC PERMIT CONDITIONS FOR EXTRA LARGE AND LARGE SWINE OPERATIONS, TO PROVIDE FOR PERMIT AMENDMENTS, TO PROVIDE FOR THE TRANSFER OF PERMITS, TO PROVIDE FOR NUTRIENT MANAGEMENT RECORDKEEPING, TO PROVIDE FOR FEES TO BE COLLECTED FOR PERMITTED SWINE OPERATIONS, TO PROVIDE FOR DESIGNATION, TO AUTHORIZE RULEMAKING, TO PROVIDE FOR VIOLATIONS, TO PROVIDE FOR REVOCATION OF PERMITS, TO PROVIDE FOR CIVIL PENALTIES, TO PROVIDE FOR FINANCIAL ASSURANCES FOR LARGE SWINE OPERATIONS AND FOR EXTRA LARGE SWINE OPERATIONS, TO PROVIDE FOR SITING REQUIREMENTS FOR EXTRA LARGE SWINE OPERATIONS, TO PROVIDE THAT CERTAIN RECORDS SHALL BE SUBJECT TO PUBLIC DISCLOSURE, TO PROVIDE FOR SEVERABILITY AND TO PROVIDE FOR CONFLICTS; AMENDING TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 42, TITLE 25, IDAHO CODE, TO ESTABLISH THE LOCAL OPTION EXTRA LARGE SWINE OPERATIONS SITING ACT, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS AND PURPOSES, TO PROVIDE FOR THE APPLICABILITY OF SPECIFIED DEFINITIONS AND TO DEFINE TERMS, TO REQUIRE SITE APPROVAL BY CERTAIN OPERATIONS THAT ARE REGULATED BY SPECIFIED LAW, TO PROVIDE THAT SITE APPROVAL IS SUPPLEMENTAL TO OTHER REQUIREMENTS, TO PROVIDE THAT PARTICIPATION IS A LOCAL OPTION, TO PROVIDE THAT LOCAL ACTION IS REQUIRED FOR ACTION BY THE IDAHO STATE DEPARTMENT OF AGRICULTURE, TO PROVIDE FOR APPLICATIONS, TO PROVIDE THAT THE DIRECTOR MAY MAKE RULES AND CONTRACT WITH OTHER AGENCIES, TO PROVIDE LOCATION GUIDELINES, TO ESTABLISH SITE REVIEW PANELS, TO PROVIDE FOR

SITING APPLICATIONS AND CONTENTS OF APPLICATIONS, TO PROVIDE DUTIES OF THE DIRECTOR RELATIVE TO APPLICATIONS, TO REQUIRE FINANCIAL ASSURANCE FOR CLOSURE AND REMEDIATION, TO PROVIDE THAT THE DIRECTOR MAY REQUEST ADDITIONAL INFORMATION, TO PROVIDE FOR VIOLATIONS AND ENFORCEMENT, TO PROVIDE FOR CONFIDENTIALITY OF RECORDS, TO PROVIDE SEVERABILITY AND TO PROVIDE FOR CONFLICTS; REPEALING SECTION 39-104A, IDAHO CODE, RELATING TO RULEMAKING AUTHORITY REGARDING LARGE SWINE AND POULTRY FEEDING OPERATIONS AND REGARDING FINANCIAL ASSURANCES FOR SUCH OPERATIONS; AND REPEALING CHAPTER 79, TITLE 39, IDAHO CODE, RELATING TO THE LOCAL OPTION SWINE FACILITIES SITING ACT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 25, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 40, Title 25, Idaho Code, and to read as follows:

CHAPTER 40
POULTRY ENVIRONMENTAL CONTROL ACT

25-4001. SHORT TITLE. This chapter shall be known as the "Poultry Environmental Control Act."

25-4002. LEGISLATIVE FINDINGS AND PURPOSES. The legislature finds that:

(1) The poultry industry is experiencing rapid changes such as increased sophistication of production technology, increased demand for capital to maintain or expand operations, consolidation of production and packing facilities and changing consumer demands and markets;

(2) Poultry operations may increase social and environmental impacts in the areas where these operations are located;

(3) Adverse environmental impacts can result from the improper siting of poultry operations, therefore, the need for establishing safe sites with an adequate supply of natural resources, such as water, and an adequate capacity for the disposal of animal waste is a matter of statewide concern;

(4) Poultry operations require adequate control through state regulatory mechanisms so that such operations do not pose a threat to the state's surface and ground water resources. The Idaho state department of agriculture is in the best position to administer the requirements of this chapter to provide an adequate regulatory framework for poultry operations.

25-4003. DEFINITIONS. As used in this chapter:

(1) "Animal feeding operation" or "AFO" means a lot or poultry operation where the following conditions are met:

(a) Poultry have been, are, or will be confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and

(b) Crops, vegetation, forage growth or postharvest residues are not sustained in the normal growing season over any portion of the lot;

(2) "Animal waste" or "manure" means animal excrement, poultry litter, feathers, feed wastes, process wastewater or any other waste associated with the confinement of poultry including animal carcasses or parts thereof;

(3) "Department" means the Idaho state department of agriculture;

(4) "Director" means the director of the Idaho state department of agriculture or his designee;

(5) "Extra large poultry operation" means an AFO that confines the following:

(a) One hundred ten thousand (110,000) or more turkeys;

(b) Sixty thousand (60,000) or more laying hens or broilers, if the AFO uses a liquid manure handling system;

(c) One hundred seventy-four thousand (174,000) or more laying hens, if the AFO uses other than a liquid manure handling system;

(d) Two hundred fifty thousand (250,000) or more chickens, other than laying hens, if the AFO uses other than a liquid manure handling system;

(e) Sixty thousand (60,000) or more ducks or geese, if the AFO uses other than a liquid manure handling system; or

(f) Ten thousand (10,000) or more ducks or geese, if the AFO uses a liquid manure handling system;

(6) "Land application" means the spreading on, or incorporation of, animal waste into the soil mantle primarily for beneficial purposes;

(7) "Large poultry operation" means an AFO that confines:

(a) Sixty thousand (60,000) to one hundred nine thousand nine hundred ninety-nine (109,999) turkeys;

(b) Thirty thousand (30,000) to fifty-nine thousand nine hundred ninety-nine (59,999) laying hens or broilers, if the AFO uses a liquid manure handling system;

(c) Eighty-two thousand (82,000) to one hundred seventy-three thousand nine hundred ninety-nine (173,999) laying hens, if the AFO uses other than a liquid manure handling system;

(d) One hundred twenty-five thousand (125,000) to two hundred forty-nine thousand nine hundred ninety-nine (249,999) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system;

(e) Thirty thousand (30,000) to fifty-nine thousand nine hundred ninety-nine (59,999) ducks or geese, if the AFO uses other than a liquid manure handling system; or

(f) Five thousand (5,000) to nine thousand nine hundred ninety-nine (9,999) ducks or geese, if the AFO uses a liquid manure handling system;

(8) "Medium poultry operation" means any AFO that confines:

(a) Sixteen thousand five hundred (16,500) to fifty-nine thousand nine hundred ninety-nine (59,999) turkeys;

(b) Nine thousand (9,000) to twenty-nine thousand nine hundred ninety-nine (29,999) laying hens or broilers, if the AFO uses a liquid manure handling system;

(c) Twenty-five thousand (25,000) to eighty-one thousand nine hundred ninety-nine (81,999) laying hens, if the AFO uses other than a liquid manure handling system;

(d) Thirty-seven thousand five hundred (37,500) to one hundred twenty-four thousand nine hundred ninety-nine (124,999) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system;

1 (e) Ten thousand (10,000) to twenty-nine thousand nine hundred ninety-
2 nine (29,999) ducks or geese, if the AFO uses other than a liquid manure
3 handling system; or

4 (f) One thousand five hundred (1,500) to four thousand nine hundred
5 ninety-nine (4,999) ducks or geese, if the AFO uses a liquid manure
6 handling system;

7 (9) "Modification" or "modified" means structural changes and alter-
8 ations to the wastewater storage containment facility, including expansion
9 that would require increased storage or containment capacity, or such
10 changes that would alter the function of the wastewater storage containment
11 facility;

12 (10) "Noncompliance" means a practice or condition that causes an unau-
13 thorized discharge, or a practice or condition that, if left uncorrected,
14 will cause an unauthorized discharge, or a condition on the poultry oper-
15 ation that does not meet the requirements of the nutrient management stan-
16 dard, nutrient management plan or 2004 American society of agricultural and
17 biological engineers (ASABE) construction standards for wastewater storage
18 and containment facilities;

19 (11) "National pollutant discharge elimination system (NPDES)" means
20 the point source permitting program established pursuant to section 402 of
21 the federal clean water act;

22 (12) "Nutrient management plan" means a plan prepared in conformance
23 with the nutrient management standard, provisions required by 40 CFR
24 122.42(e) (1), or other equally protective standard for managing the amount,
25 placement, form and timing of the land application of nutrients and soil
26 amendments;

27 (13) "Nutrient management standard" means the 2007 publication by the
28 United States department of agriculture, natural resources conservation
29 service, conservation practice standard, nutrient management code 590 or
30 other equally protective standard approved by the director;

31 (14) "Person" means any individual, association, partnership, firm,
32 joint stock company, joint venture, trust, estate, political subdivision,
33 public or private corporation, state or federal governmental department,
34 agency or instrumentality, or any legal entity that is recognized by law as
35 the subject of rights and duties;

36 (15) "Poultry" means chickens, turkeys, ducks and geese;

37 (16) "Process wastewater" means water directly or indirectly used in
38 the operation of the AFO for any or all of the following: spillage or over-
39 flow from animal or poultry watering systems; washing, cleaning or flushing
40 pens, barns, manure pits or other AFO facilities; direct contact swimming,
41 washing or spray cooling of animals; or dust control. Process wastewater
42 also includes any water that comes into contact with any raw materials,
43 products or byproducts including manure, litter, feathers, feed, milk, eggs
44 or bedding;

45 (17) "Small poultry operation" is an AFO that has fewer than the follow-
46 ing numbers of poultry:

47 (a) Sixteen thousand five hundred (16,500) turkeys;

48 (b) Nine thousand (9,000) laying hens or broilers, if the AFO uses a
49 liquid manure handling system;

(c) Twenty-five thousand (25,000) laying hens, if the AFO uses other than a liquid manure handling system;

(d) Thirty-seven thousand five hundred (37,500) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system;

(e) Ten thousand (10,000) ducks or geese, if the AFO uses other than a liquid manure handling system; or

(f) One thousand five hundred (1,500) ducks or geese, if the AFO uses a liquid manure handling system;

(18) "Unauthorized discharge" means a discharge of process wastewater or manure to state surface waters that is not authorized by an NPDES permit or the release of process wastewater or manure to waters of the state that does not meet the requirements of this chapter or water quality standards;

(19) "Wastewater storage and containment facilities" means the portion of an AFO where manure or process wastewater is stored or collected. This may include corrals, feeding areas, animal waste storage areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons or evaporative ponds;

(20) "Waters of the state" means all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof that are wholly or partially within, which flow through or border upon the state.

25-4004. PERMIT REQUIRED. (1) No person shall construct, operate or expand an extra large, large or medium poultry operation without first obtaining a permit issued by the director.

(2) Two (2) or more poultry operations under common control of the same person may be considered, for purposes of permitting, to be a single poultry operation, even though separately their capacity is less than an extra large, large or medium poultry operation, if they use a common wastewater storage and containment facilities or land application site.

(3) The provisions of this section shall be applicable only to those extra large, large or medium poultry operations constructed or modified after the effective date of this act.

(4) A small poultry operation is not required to obtain a permit unless the operation is designated as described in section 25-4013, Idaho Code.

25-4005. PERMIT APPLICATION. (1) Every person who is required to obtain a permit under the provisions of this chapter shall submit a permit application to the department prior to facility operation or modification.

(2) Each application shall include information in sufficient detail to allow the director to make necessary application review decisions concerning design and environmental protection.

(3) An application fee shall be submitted with each permit application as follows:

(a) Two thousand dollars (\$2,000) for any medium poultry operation;

(b) Five thousand dollars (\$5,000) for any large poultry operation;

(c) Ten thousand dollars (\$10,000) for any extra large poultry operation;

(d) No application fee is required if the poultry operation is designated.

1 (4) Application fees may be credited to the applicant by the department
2 and applied toward payment of the applicant's monthly fees, up to the amount
3 of the application fee.

4 25-4006. EXISTING FACILITIES. (1) Existing extra large, large and
5 medium poultry operation owners shall register with the department no later
6 than July 1, 2011, upon forms provided by the department. Registration
7 shall include information in sufficient detail to allow the director to make
8 necessary application review decisions concerning design and environmental
9 protection. Nothing in this section shall be construed to deny an existing
10 operation the opportunity to apply for and receive a permit under the
11 provisions of this chapter.

12 (2) Existing extra large and large poultry operations shall submit
13 a nutrient management plan and closure plan to the director for approval
14 within two (2) years of the original effective date of this act. An applica-
15 tion fee shall not be required unless the operation is modified.

16 (3) The owner of an existing poultry operation shall not increase the
17 one-time animal capacity of the operation by ten percent (10%) or more with-
18 out first obtaining a permit for the expansion as required by the provisions
19 of this chapter. The ten percent (10%) increase is measured cumulatively
20 from the original effective date of this act or the date the owner first ob-
21 tained a permit.

22 25-4007. PERMIT CONDITIONS. In addition to conditions imposed by de-
23 partment rules or specific conditions determined by the director, the fol-
24 lowing conditions shall apply to all permittees:

25 (1) The permittee shall comply with all conditions of the permit. The
26 permit shall not relieve the permittee of the responsibility to comply with
27 all other applicable local, state and federal laws;

28 (2) The permittee shall allow the director to enter and access the op-
29 eration provided the biosecurity and sanitary standards of an operation are
30 followed, so long as the standards and requirements do not inhibit the abil-
31 ity of the director to:

32 (a) Enter at reasonable times upon the premises of a permitted opera-
33 tion or where records are kept;

34 (b) Have access to and copy at reasonable times any records that must be
35 kept under conditions of the permit;

36 (c) Inspect any operation or land application site; and

37 (d) Sample or monitor at reasonable times substances or parameters di-
38 rectly related to compliance with the permit or these rules;

39 (3) The permittee shall furnish to the director, upon request and
40 within a reasonable time, any information including copies of records re-
41 quired by the permit or other applicable rules in order to determine whether
42 cause exists for modifying or revoking the permit or to determine compliance
43 with the permit or the provisions of this chapter or rules promulgated
44 hereunder;

45 (4) If a permittee fails to begin construction or expansion of an opera-
46 tion within two (2) years of the effective date of a permit, the director may
47 void the permit and require a new application;

48 (5) The permittee shall report to the director:

(a) Verbally, no later than twenty-four (24) hours from the time the permittee knows or should reasonably know of any unauthorized discharge;

(b) In writing, within five (5) working days from the time a permittee knows or should reasonably know of any event that has resulted in or that may result in any unauthorized discharge; and

(c) In writing, when the permittee knows or should reasonably know of materially relevant facts not submitted, or incorrect information submitted, in a permit application or any report or notice to the director;

(6) Dead animals shall be handled in accordance with department rules;

(7) An operation's wastewater storage and containment facilities shall be designed and constructed in accordance with the more stringent of either the United States department of agriculture natural resources conservation service (NRCS) or the American society of agricultural and biological engineers (ASABE) standards;

(8) All permitted operations shall have and implement a nutrient management plan that has been reviewed and approved by the department;

(a) Nutrient management plans shall be amended if modifications to the operation, as outlined in the nutrient management standard or other conditions, warrant the amendment;

(b) Annual soil tests shall be conducted on all land application sites owned or leased by the permittee every year to determine compliance with the nutrient management plan and nutrient management standard. The director may require more frequent soil tests if deemed necessary;

(c) Subsequent regulatory soil test(s) on fields that were identified as exceeding the phosphorus threshold shall be conducted. These tests shall be taken in the top one (1) foot of soil;

(9) All new or modified wastewater storage and containment facilities shall be inspected and approved by the department.

25-4008. SPECIFIC PERMIT CONDITIONS FOR EXTRA LARGE AND LARGE POULTRY OPERATIONS. (1) The legislature finds that specific conditions for extra large and large poultry operations necessary for the protection of the environment may differ from operation to operation because of varying environmental conditions and animal waste compositions. The director may establish specific permit conditions on a case-by-case basis. Specific conditions shall take into consideration operation-specific characteristics including, but not limited to, the following:

(a) The geological and climatic nature of the poultry operation site;

(b) The size of the site and its proximity to ground and surface water; and

(c) The need for monitoring and recordkeeping necessary to determine if the poultry operation is being operated in conformance with its design and if its design is adequate to protect the environment.

(2) Conditions of the permit may specify:

(a) An odor management plan; or

(b) Any other condition the director finds necessary to protect the environment.

(3) Compliance schedules. The director may establish a compliance schedule for operations as part of the permit conditions including:

- 1 (a) Specific steps or actions to be taken by the permittee to achieve
- 2 compliance with applicable requirements or permit conditions; and
- 3 (b) Dates by which those steps or actions are to be taken.
- 4 (4) Monitoring requirements. Any poultry operation may be subject to
- 5 monitoring requirements including, but not limited to, the following:
- 6 (a) The type, installation, use and maintenance of monitoring equip-
- 7 ment;
- 8 (b) Monitoring or sampling methodology, frequency and locations;
- 9 (c) Monitored substances or parameters;
- 10 (d) Testing and analytical procedures; and
- 11 (e) Reporting requirements including both frequency and form.
- 12 (5) All large and extra large operations shall have a closure plan as
- 13 approved by the director.

14 25-4009. PERMIT AMENDMENTS. (1) Minor amendments are those that do not

15 have the potential to adversely impact the environment and shall be approved

16 by the director. Minor amendments are generally limited to:

- 17 (a) The correction of typographical errors;
- 18 (b) Transfer of ownership or operational control in accordance with the
- 19 provisions of this chapter; or
- 20 (c) Certain minor changes in monitoring or operational conditions.
- 21 (2) All amendments not considered minor shall be considered major
- 22 amendments. The procedure for making major modifications shall be the same
- 23 as that used for a new permit.

24 25-4010. TRANSFER OF PERMITS. (1) A new owner or operator of a poultry

25 operation shall submit a transfer application to the director that includes

26 at least the following:

- 27 (a) Name and address of the new owner; and
- 28 (b) Demonstration that any financial assurance required by this chap-
- 29 ter remains valid and available for remediation and closure costs of the
- 30 operation.
- 31 The director shall review the financial assurance demonstration and within
- 32 thirty (30) days of its receipt either approve the transfer or, if such
- 33 demonstration is not adequate, deny the transfer.

- 34 (2) An approved permit transfer shall be a minor amendment.
- 35 (3) A notification of a permit transfer denial shall set forth the rea-
- 36 sons for the denial, steps necessary to meet the requirements for a permit
- 37 transfer and the opportunity for the applicant to request a hearing.
- 38 (4) The new permittee shall assume all rights and responsibilities of
- 39 the transferred permit.

40 25-4011. NUTRIENT MANAGEMENT RECORDKEEPING. The owner or operator of

41 a poultry feeding operation that is required to have a nutrient management

42 plan shall maintain accurate records. These records shall include at a mini-

43 mum:

- 44 (1) Regulatory soil samples that have been taken on cropland owned or
- 45 operated as described in the poultry operation's nutrient management plan.
- 46 Samples shall be taken by a certified soil sampler and tested by a laboratory
- 47 that meets the requirements and performance standards of the North American

1 proficiency testing program, as part of nutrient management standard 590 or
 2 other methods as approved by the department;

3 (2) Annual soil analysis;

4 (3) The date and amount of manure and commercial fertilizer applied to
 5 individual poultry operation owned or operated fields;

6 (4) The date(s) that manure was exported, number of acres to which the
 7 manure is applied, the amount of manure exported and to whom the manure was
 8 exported; and

9 (5) Actual crop yields on owned or operated fields.

10 25-4012. FEES TO BE COLLECTED FOR PERMITTED POULTRY OPERATIONS. (1)
 11 The department may levy a fee for the purpose of carrying out the provisions
 12 of this chapter and rules promulgated hereunder.

13 (2) Fees collected shall be used for costs related to the implementa-
 14 tion of the provisions of this chapter.

15 (3) Fees shall be levied on a uniform basis in an amount reasonably nec-
 16 essary to cover the cost of the inspection program and the administration of
 17 the Idaho state department of agriculture poultry program. The department
 18 shall adjust the fees to be collected under the provisions of this section as
 19 necessary to meet the expenses of the inspections.

20 (4) Fees may not exceed five-thousandths (0.005) of a cent per poultry
 21 marketed or four-thousandths (0.004) of a cent per dozen eggs marketed for
 22 hatchery purposes.

23 (5) The person responsible for the marketing of poultry or eggs shall be
 24 responsible for the monthly payment of the fees and a summary of the number
 25 of poultry or eggs marketed. The fees accrued in any given month are due and
 26 payable no later than the twentieth day of the following month.

27 (6) All fees collected or received by the department under the provi-
 28 sions of this chapter shall be deposited in the "Poultry Inspection Fund,"
 29 which is hereby created in the state treasury. Interest earned on the in-
 30 vestment of idle moneys in the fund shall be paid to the fund. All moneys
 31 deposited into the fund are hereby continuously appropriated to the Idaho
 32 state department of agriculture to be used for inspections required pursuant
 33 to the provisions of this chapter.

34 (7) Past due fees shall be charged interest at the state approved rate.

35 (8) The department is authorized to audit the permittee for verifica-
 36 tion of the number of poultry or eggs marketed.

37 25-4013. DESIGNATION. (1) The director may, on a case-by-case basis,
 38 designate a poultry feeding operation as follows:

39 (a) A small poultry operation may be designated as a medium poultry
 40 operation and will be required to follow all permit requirements for a
 41 medium poultry operation if it is determined the operation is a signifi-
 42 cant contributor of pollutants to waters of the state;

43 (b) A medium poultry operation may be designated as a large poultry
 44 operation and will be required to follow all permit requirements for a
 45 large poultry operation if:

46 (i) There is an unauthorized discharge into waters of the state
 47 through a manmade ditch, flushing system or other similar manmade
 48 device;

(ii) There is an unauthorized discharge directly into waters of the state that originate outside of and pass over, across or through the poultry operation or otherwise come into direct contact with the animals confined in the operation; or

(iii) There are repeated instances of noncompliance.

(2) The designation shall be provided to the operator of the poultry feeding operation in writing, setting forth the basis for the director's decision.

(3) The director shall consider the following factors when deciding whether to designate a poultry feeding operation:

(a) Size of the poultry feeding operation and the amount of manure, process wastewater and runoff reaching waters of the state;

(b) Location of the poultry feeding operation relative to waters of the state;

(c) Means of conveyance of manure, process wastewater and runoff into waters of the state; and

(d) Slope, vegetation, precipitation and other factors affecting the likelihood or frequency of discharge of manure, process wastewater or runoff into waters of the state.

(4) Upon request by the operator, the director shall redesignate a poultry operation previously designated under the provisions of subsection (1) of this section, if the poultry operation is no longer a significant contributor of pollution to waters of the state. Such redesignation shall be provided to the operator in writing and any fees paid by the operation due to the designation will not be refundable to the operation.

25-4014. AUTHORITY TO PROMULGATE RULES. (1) The legislature finds that poultry operations require adequate control through state regulatory mechanisms in order to prevent such operations from posing a threat to the state's surface and ground water resources. The department of agriculture is in the best position to administer and implement rules to provide an adequate regulatory framework for poultry feeding operations.

(2) The director is authorized to modify the department's administrative rules and to promulgate new rules for permitting and regulating poultry operations.

25-4015. VIOLATIONS. (1) The failure by a permittee to comply with the provisions of this chapter and rules promulgated hereunder, or with any permit condition, shall be deemed a violation.

(2) Any person who knowingly makes a false statement, representation or certification in any application, report, document or record developed, maintained or submitted pursuant to the provisions of this chapter, rules promulgated hereunder, or the conditions of a permit, shall be deemed to have committed a violation.

(3) Any unauthorized discharge from a poultry operation shall be deemed a violation.

(4) Any person violating any provision of this chapter, the rules promulgated hereunder, permit or orders issued shall be liable for a civil penalty as set forth in section 25-4016, Idaho Code.

(5) The director may revoke a permit for:

1 (a) A material violation of any condition of a permit; or

2 (b) If the permit was obtained by misrepresentation or failure to dis-
3 close all relevant facts.

4 (6) Prior to revoking a permit, the director shall issue a notice of
5 intent to revoke, which shall become final unless the permittee timely
6 requests an administrative hearing in writing. Such hearing shall be con-
7 ducted in accordance with the provisions of chapter 52, title 67, Idaho Code.

8 25-4016. CIVIL PENALTIES. Any person determined in an action con-
9 ducted under the provisions of chapter 52, title 67, Idaho Code, to have
10 violated any provision of this chapter, rules promulgated hereunder, or any
11 permit or order issued, shall be liable for a civil penalty not to exceed ten
12 thousand dollars (\$10,000) per violation, or one thousand dollars (\$1,000)
13 for each day of a continuing violation. Moneys collected for violations
14 shall be deposited in the state treasury and credited to the state school
15 building fund. The imposition or computation of monetary penalties shall
16 take into account the seriousness of the violation, good faith efforts to
17 comply with the law, the economic impact of the penalty on the violator, the
18 economic benefit, if any, of the violation and such other matters as justice
19 requires.

20 25-4017. FINANCIAL ASSURANCES FOR LARGE POULTRY OPERATIONS. The owner
21 of a large poultry operation shall submit, as part of the permit application:

22 (1) A bond, or equivalent financial assurance mechanisms as provided in
23 section 25-4018(2), Idaho Code, in the amount of one hundred thousand dol-
24 lars (\$100,000); and

25 (2) A closure plan for the poultry operation as approved by the direc-
26 tor.

27 25-4018. FINANCIAL ASSURANCES FOR EXTRA LARGE POULTRY OPERATIONS. (1)
28 The owner of an extra large poultry operation shall submit, as part of the
29 permit application, a detailed written estimate in current dollars of the
30 cost of hiring a third party to:

31 (a) Remediate potential contamination caused by the operation of the
32 poultry facility or of any potential spill or breach, including, with-
33 out limitation, remediation pursuant to the poultry operation's spill
34 contingency plan; and

35 (b) Close the poultry operation in accordance with an approved closure
36 plan.

37 The department must approve the cost estimate as reasonable prior to the is-
38 suance of a permit.

39 (2) Financial assurance mechanisms. The owner shall submit, as part
40 of the permit application, evidence of financial assurance to cover the ap-
41 proved remediation and closure cost estimates. Provided however, if the de-
42 partment has previously determined that a complete application has been sub-
43 mitted, the owner shall submit the remediation and closure cost estimates
44 and financial assurance mechanism to the department for approval prior to
45 the issuance of a permit. The mechanism used to demonstrate financial assur-
46 ance shall be submitted to the department for approval and shall ensure that
47 the funds necessary to meet the approved costs of remediation and closure

1 shall be available whenever they are needed. The financial assurance mecha-
2 nisms allowed for poultry operations shall include any mechanism or a combi-
3 nation of mechanisms meeting the criteria set forth below or other mechanism
4 approved by the department.

5 (a) Trust fund.

6 (i) An owner may satisfy the requirements by establishing a trust
7 fund and submitting an originally signed duplicate of the trust
8 agreement to the department. The trustee must be an entity that
9 has the authority to act as a trustee and whose trust operations
10 are regulated and examined by a federal or state agency;

11 (ii) After the trust fund is established, whenever the current re-
12 mediatement and closure cost estimates change, the owner must com-
13 pare the new estimates with the trustee's most recent annual valu-
14 ation of the trust fund. If the value of the fund is less than the
15 amount of the new estimate, the owner, within sixty (60) days after
16 the change in the cost estimate, must either deposit an amount into
17 the fund so that its value after the deposit is at least equal to
18 the amount of the current remediation or closure cost estimate, or
19 obtain other financial assurance as specified in this subsection
20 to cover the difference;

21 (iii) If the value of the trust fund is greater than the total
22 amount of the current remediation or closure cost estimate, the
23 owner may submit a written request to the department for release
24 of the amount in excess of the current remediation or closure cost
25 estimate;

26 (iv) If an owner substitutes other financial assurance as spec-
27 ified in this subsection for all or part of the trust fund, he
28 may submit a written request to the department for release of
29 the amount in excess of the current remediation or closure cost
30 estimate covered by the trust fund.

31 (b) Surety bond.

32 (i) An owner may satisfy the requirements by obtaining a payment
33 or performance surety bond and submitting a certified copy of the
34 bond to the department. The surety company issuing the bond must,
35 at a minimum, be among those listed as acceptable sureties on fed-
36 eral bonds in circular 570 of the U.S. department of the treasury;

37 (ii) The penal sum of the bond must be in an amount at least equal
38 to the current remediation and closure cost estimates;

39 (iii) Under the terms of the bond, the surety shall become liable
40 on the bond obligation when: (1) the owner fails to perform as
41 guaranteed by the bond; or (2) the department notifies the owner
42 that he has failed to meet requirements as provided by this chap-
43 ter;

44 (iv) Under the terms of the bond, the surety may cancel the bond by
45 sending notice of cancellation by certified mail to the owner and
46 the department one hundred twenty (120) days in advance of cancel-
47 lation. Cancellation may not occur, however, during the one hun-
48 dred twenty (120) days beginning with the date of receipt of the
49 notice by the department, as evidenced by the return receipt. The
50 surety shall remain liable on the bond for cost of remediation and

closure unless the owner obtains a replacement financial assurance mechanism, approved by the department, that covers both the existing and future costs of remediation and closure.

(c) Letter of credit.

(i) An owner may satisfy the requirements by obtaining an irrevocable standby letter of credit and submitting a certified copy of the letter to the department. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency;

(ii) The letter of credit shall be accompanied by a letter from the owner referring to the letter of credit by number, issuing institution and date, and providing the following information: the type of poultry operation, name and address of the poultry operation and the amount of funds assured for remediation and closure of the poultry operation by the letter of credit;

(iii) The letter of credit shall be irrevocable and issued for a period of at least one (1) year. The letter of credit shall provide that the expiration date shall be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner and the department by certified mail of a decision not to extend the expiration date. Cancellation may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by the department, as evidenced by the return receipt. The issuing institution shall remain liable on the letter of credit for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the department, that covers both the existing and future costs of remediation and closure;

(iv) The letter of credit must be issued in an amount at least equal to the current remediation and closure cost estimates.

(d) Insurance.

(i) An owner may satisfy the requirements by obtaining remediation and closure insurance and submitting a certificate of such insurance to the department. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states;

(ii) The insurance policy must be issued for a face amount at least equal to the current remediation and closure cost estimates. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments;

(iii) Each insurance policy must contain a provision allowing assignment of the policy to a successor. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused;

(iv) The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. The insurer may cancel the policy by sending notice by certified mail to the owner and the department one hundred twenty (120) days in advance. Cancellation may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by the department, as evidenced by the return receipt. The insurer shall remain liable on the policy for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the department, that covers both the existing and future costs of remediation and closure.

(e) Corporate guarantee.

(i) An owner may satisfy the requirements by obtaining a written guarantee and submitting a certified copy of the guarantee and appropriate letter from the guarantor. The guarantor must be the direct or higher-tier parent corporation of the owner, a firm whose parent corporation is also the parent corporation of the owner, or a firm with a substantial business relationship with the owner;

(ii) If the guarantor's parent company is also the parent corporation of the owner, a letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee;

(iii) If the guarantor is a firm with a substantial business relationship with the owner, the letter must describe the substantial business relationship and the value received in consideration of the guarantee;

(iv) The terms of the guarantee shall provide that if the owner fails to perform remediation or closure of a poultry operation covered by the guarantee, the guarantor shall: (1) perform, or pay a third party to perform, remediation and closure as required; or (2) establish a fully funded trust fund as specified in paragraph (a) of this subsection in the name of the owner;

(v) The guarantee shall remain in force for as long as the owner must comply with the applicable financial assurance requirements, unless the guarantor sends notice of cancellation by certified mail to the owner and to the department one hundred twenty (120) days in advance. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice by the department, as evidenced by the return receipt. The guarantor shall remain liable on the guarantee for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the department, that covers both the existing and future costs of remediation and closure.

(f) If a financial assurance mechanism is canceled by the issuing entity, the owner shall obtain alternate financial assurance, within sixty (60) days of receipt of notice of cancellation by the department, which shall be submitted to the department for approval. The alternate financial assurance must become effective not later than the effective

1 date of cancellation or termination of the existing financial assur-
2 ance. An owner may cancel a financial assurance mechanism only after
3 first obtaining an alternative mechanism approved by the department.

4 (3) Continuous coverage. The owner shall provide continuous cover-
5 age for remediation and closure until released from financial assurance
6 requirements by the department.

7 (4) Adjustment of financial assurance amounts. The following provi-
8 sions apply to the adjustment of the amount of financial assurance:

9 (a) The owner shall increase the remediation and closure cost estimates
10 and the amount of financial assurance if changes to the closure plan or
11 poultry operation conditions or operations increase the cost estimates
12 at any time during the active life of the poultry operation. The cost
13 estimates and financial assurance shall also be adjusted to reflect
14 inflation. Increased cost estimates and financial assurance shall be
15 submitted to the department for approval;

16 (b) The owner may reduce the remediation and closure cost estimates and
17 the amount of financial assurance if the cost estimates exceed the maxi-
18 mum cost of remediation or closure at any time during the active life of
19 the poultry operation. The owner shall first notify the department and
20 obtain its approval of the justification for the reduction of the reme-
21 diation and closure cost estimates.

22 (5) Release from financial assurance requirements. When remediation
23 and closure conditions required by a permit are complete, financial assur-
24 ance shall be released by the department as follows:

25 (a) When the department determines that initial closure activities
26 have been completed, financial assurance, less identified retainages,
27 shall be released;

28 (b) A sufficient amount of financial assurance shall be retained by the
29 department, up to five (5) years after closure, to ensure proper remedi-
30 ation and closure of a poultry operation;

31 (c) Release of any amount of financial assurance shall not release
32 the owner from any responsibility for meeting remediation or closure
33 requirements.

34 (6) Owner liability. Nothing in this section shall relieve the owner of
35 liability for remediation and closure costs. The use of all financial assur-
36 ance shall not relieve the owner from responsibility and liability for reme-
37 diation and closure costs.

38 25-4019. PUBLIC RECORDS ACT -- RECORDS. Information obtained by a pub-
39 lic agency pursuant to this chapter or its associated rules is subject to
40 public disclosure pursuant to the provisions of chapter 3, title 9, Idaho
41 Code.

42 25-4020. SEVERABILITY. If any provision of this chapter or its appli-
43 cation to any person or circumstance is held invalid, the invalidity does not
44 affect other provisions or applications of this chapter which can be given
45 effect without the invalid provision or application, and to this end the pro-
46 visions of this chapter are severable.

4 SECTION 2. That Title 25, Idaho Code, be, and the same is hereby amended
5 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
6 ter 41, Title 25, Idaho Code, and to read as follows:

7 CHAPTER 41
8 SWINE ENVIRONMENTAL CONTROL ACT

9 25-4101. SHORT TITLE. This chapter shall be known as the "Swine Envi-
10 ronmental Control Act."

11 25-4102. LEGISLATIVE FINDINGS AND PURPOSES. The legislature finds
12 that:

(1) The swine industry is experiencing rapid changes such as increased sophistication of production technology, increased demand for capital to maintain or expand operations, consolidation of production and packing facilities and changing consumer demands and markets;

17 (2) Swine operations increase social and environmental impacts in the
18 areas where these operations are located;

(3) Adverse environmental impacts can result from the improper siting of swine operations, therefore, the need for establishing safe sites with an adequate supply of natural resources, such as water, and an adequate capacity for the disposal of animal waste is a matter of statewide concern;

(4) Swine operations require adequate control through state regulatory mechanisms so that such operations do not pose a threat to the state's surface and ground water resources. The Idaho state department of agriculture is in the best position to administer the requirements of this chapter to provide an adequate regulatory framework for swine operations.

28 25-4103. DEFINITIONS. As used in this chapter:

29 (1) "Animal feeding operation" or "AFO" means a lot or swine operation
30 where the following conditions are met:

31 (a) Swine have been, are, or will be confined and fed or maintained for
32 a total of forty-five (45) days or more in any twelve (12) month period;
33 and

34 (b) Crops, vegetation, forage growth or postharvest residues are not
35 sustained in the normal growing season over any portion of the lot;

36 (2) "Animal waste" or "manure" means animal excrement, feed wastes,
37 process wastewater or any other waste associated with the confinement of
38 swine including animal carcasses or parts thereof;

39 (3) "Department" means the Idaho state department of agriculture;

40 (4) "Director" means the director of the Idaho state department of
41 agriculture or his designee;

42 (5) "Extra large swine operation" means an AFO that confines at a mini-
43 mum:

44 (a) Fifty thousand (50,000) swine weighing fifty-five (55) pounds or
45 more;

- 1 (b) Two hundred thousand (200,000) swine weighing less than fifty-five
2 (55) pounds;
- 3 (6) "Land application" means the spreading on, or incorporation of, an-
4 imal waste into the soil mantle primarily for beneficial purposes;
- 5 (7) "Large swine operation" means an AFO that confines:
6 (a) Two thousand five hundred (2,500) to forty-nine thousand nine
7 hundred ninety-nine (49,999) swine weighing fifty-five (55) pounds or
8 more;
- 9 (b) Ten thousand (10,000) to one hundred ninety-nine thousand nine
10 hundred ninety-nine (199,999) swine weighing less than fifty-five (55)
11 pounds;
- 12 (8) "Medium swine operation" means any AFO that confines:
13 (a) Seven hundred fifty (750) to two thousand four hundred ninety-nine
14 (2,499) swine weighing fifty-five (55) pounds or more;
- 15 (b) Three thousand (3,000) to nine thousand nine hundred ninety-nine
16 (9,999) swine weighing less than fifty-five (55) pounds;
- 17 (9) "Modification" or "modified" means structural changes and alter-
18 ations to the wastewater storage containment facility including expansion
19 that would require increased storage or containment capacity or such changes
20 that would alter the function of the wastewater storage containment facil-
21 ity;
- 22 (10) "Noncompliance" means a practice or condition that causes an unau-
23 thorized discharge, or a practice or condition that, if left uncorrected,
24 will cause an unauthorized discharge; or a condition on the swine operation
25 that does not meet the requirements of the nutrient management standard,
26 nutrient management plan or 2004 American society of agricultural and
27 biological engineers (ASABE) construction standards for wastewater storage
28 and containment facilities;
- 29 (11) "National pollutant discharge elimination system (NPDES)" means
30 the point source permitting program established pursuant to section 402 of
31 the federal clean water act;
- 32 (12) "Nutrient management plan" means a plan prepared in conformance
33 with the nutrient management standard, provisions required by 40 CFR
34 122.42(e)(1), or other equally protective standard for managing the amount,
35 placement, form and timing of the land application of nutrients and soil
36 amendments;
- 37 (13) "Nutrient management standard" means the 2007 publication by the
38 United States department of agriculture, natural resources conservation
39 service, conservation practice standard, nutrient management code 590 or
40 other equally protective standard approved by the director;
- 41 (14) "Person" means any individual, association, partnership, firm,
42 joint stock company, joint venture, trust, estate, political subdivision,
43 public or private corporation, state or federal governmental department,
44 agency or instrumentality, or any legal entity that is recognized by law as
45 the subject of rights and duties;
- 46 (15) "Process wastewater" means water directly or indirectly used in
47 the operation of the AFO for any or all of the following: spillage or over-
48 flow from animal or swine watering systems; washing, cleaning or flushing
49 pens, barns, manure pits or other AFO facilities; direct contact swimming,
50 washing or spray cooling of animals; or dust control. Process wastewater

1 also includes any water that comes into contact with any raw materials,
2 products or byproducts including manure, feed, milk, eggs or bedding;

3 (16) "Small swine operation" is an AFO that has fewer than the following
4 numbers of swine:

5 (a) Seven hundred fifty (750) swine weighing fifty-five (55) pounds or
6 more;

7 (b) Three thousand (3,000) swine weighing less than fifty-five (55)
8 pounds;

9 (17) "Swine" means any member of the family of suidae;

10 (18) "Unauthorized discharge" means a discharge of process wastewater
11 or manure to state surface waters that is not authorized by an NPDES permit or
12 the release of process wastewater or manure to waters of the state that does
13 not meet the requirements of this chapter or water quality standards;

14 (19) "Wastewater storage and containment facilities" means the portion
15 of an AFO where manure or process wastewater is stored or collected. This may
16 include corrals, feeding areas, animal waste storage areas, waste collec-
17 tion systems, waste conveyance systems, waste storage ponds, waste treat-
18 ment lagoons or evaporative ponds;

19 (20) "Waters of the state" means all accumulations of water, surface and
20 underground, natural and artificial, public and private, or parts thereof
21 that are wholly or partially within, which flow through or border upon the
22 state.

23 25-4104. PERMIT REQUIRED. (1) No person shall construct, operate or
24 expand an extra large, large or medium swine operation without first obtain-
25 ing a permit issued by the director.

26 (2) Two (2) or more swine operations under common control of the same
27 person may be considered, for purposes of permitting, to be a single swine
28 operation, even though separately their capacity is less than an extra
29 large, large or medium swine operation, if they use a common wastewater
30 storage and containment facilities or land application site.

31 (3) This section shall be applicable only to those extra large, large or
32 medium swine operations constructed or modified after the effective date of
33 this act.

34 (4) A small swine operation is not required to obtain a permit unless
35 the operation is designated as described in section 25-4113, Idaho Code.

36 25-4105. PERMIT APPLICATION. (1) Every person who is required to ob-
37 tain a permit under the provisions of this chapter shall submit a permit ap-
38 plication to the department prior to facility operation or modification.

39 (2) Each application shall include information in sufficient detail to
40 allow the director to make necessary application review decisions concern-
41 ing design and environmental protection.

42 (3) An application fee shall be submitted with each permit application
43 as follows:

44 (a) Two thousand dollars (\$2,000) for any medium swine operation;

45 (b) Five thousand dollars (\$5,000) for any large swine operation;

46 (c) Ten thousand dollars (\$10,000) for any extra large swine operation;

47 (d) No application fee is required if the swine operation is desig-
48 nated.

(4) Application fees may be credited to the applicant by the department of agriculture and applied toward payment of the applicant's monthly fees, up to the amount of the application fee.

25-4106. EXISTING SWINE OPERATIONS. (1) Existing extra large, large and medium swine operation owners shall register on a registration form with the department no later than July 1, 2011, upon forms provided by the department. Registration shall include information in sufficient detail to allow the director to make necessary application review decisions concerning design and environmental protection. Nothing in this section shall be construed to deny an existing operation the opportunity to apply for a permit under the provisions of this chapter.

(2) Existing extra large and large swine operations shall submit a nutrient management plan and closure plan to the director for approval within two (2) years of the original effective date of this act. An application fee shall not be required unless the operation is modified.

(3) The owner of an existing swine operation shall not increase the one-time animal capacity of the operation by ten percent (10%) or more without first obtaining a permit for the expansion as required by the provisions of this chapter. The ten percent (10%) increase is measured cumulatively from the original effective date of this act or the date the owner first obtained a permit.

25-4107. PERMIT CONDITIONS. In addition to conditions imposed by department rules or specific conditions determined by the director, the following conditions shall apply to all permittees:

(1) The permittee shall comply with all conditions of the permit. The permit shall not relieve the permittee of the responsibility to comply with all other applicable local, state and federal laws;

(2) The permittee shall allow the director to enter and access the operation provided the biosecurity and sanitary standards of an operation are followed, so long as the standards and requirements do not inhibit the director's ability to:

(a) Enter at reasonable times upon the premises of a permitted operation or where records are kept;

(b) Have access to and copy at reasonable times any records that must be kept under conditions of the permit;

(c) Inspect any operation or land application site; and

(d) Sample or monitor at reasonable times substances or parameters directly related to compliance with the permit or rules promulgated hereunder;

(3) The permittee shall furnish to the director, upon request and within a reasonable time, any information including copies of records required by the permit or other applicable rules in order to determine whether cause exists for modifying or revoking the permit or to determine compliance with the permit or the provisions of this chapter or rules promulgated hereunder;

(4) If a permittee fails to begin construction or expansion of an operation within two (2) years of the effective date of a permit, the director may void the permit and require a new application;

1 (5) The permittee shall report to the director:

2 (a) Verbally, no later than twenty-four (24) hours from the time the
3 permittee knows or should reasonably know of any unauthorized dis-
4 charge;

5 (b) In writing, within five (5) working days from the time a permittee
6 knows or should reasonably know of any event that has resulted or that
7 may result in any unauthorized discharge; and

8 (c) In writing, when the permittee knows or should reasonably know of
9 materially relevant facts not submitted or incorrect information sub-
10 mitted in a permit application or any report or notice to the director;

11 (6) Dead animals shall be handled in accordance with department rules;

12 (7) A swine operation's wastewater storage and containment facilities
13 shall be designed and constructed in accordance with the more stringent of
14 either the United States department of agriculture natural resources con-
15 servation service (NRCS) or the American society of agricultural and biolog-
16 ical engineers (ASABE) standards;

17 (8) All permitted swine operations shall have and implement a nutri-
18 ent management plan that has been reviewed and approved by the department of
19 agriculture:

20 (a) Nutrient management plans shall be amended if modifications to the
21 operation, as outlined in the nutrient management standard or other
22 conditions, warrant the amendment;

23 (b) Annual soil tests shall be conducted on all land application sites
24 owned or leased by the permittee every year to determine compliance with
25 the nutrient management plan and nutrient management standard. The di-
26 rector may require more frequent soil tests if deemed necessary;

27 (c) Subsequent regulatory soil test(s) on fields that were identified
28 as exceeding the phosphorus threshold will be conducted. These tests
29 shall be taken in the top one (1) foot of soil;

30 (9) All new or modified wastewater storage and containment facilities
31 shall be inspected and approved by the department.

32 25-4108. SPECIFIC PERMIT CONDITIONS FOR EXTRA LARGE AND LARGE SWINE
33 OPERATIONS. (1) The legislature finds that specific conditions for ex-
34 tra large and large swine operations necessary for the protection of the
35 environment may differ from operation to operation because of varying
36 environmental conditions and animal waste compositions. The director may
37 establish specific permit conditions on a case-by-case basis. Specific con-
38 ditions shall take into consideration operation-specific characteristics
39 including, but not limited to, the following:

40 (a) The geological and climatic nature of the swine operation site;

41 (b) The size of the site and its proximity to ground and surface water;

42 (c) The need for monitoring and recordkeeping necessary to determine if
43 the swine operation is being operated in conformance with its design and
44 if its design is adequate to protect the environment.

45 (2) Conditions of the permit may specify:

46 (a) An odor management plan; or

47 (b) Any other condition the director finds necessary to protect the en-
48 vironment.

1 (3) Compliance schedules. The director may establish a compliance
2 schedule for operations as part of the permit conditions including:

- 3 (a) Specific steps or actions to be taken by the permittee to achieve
- 4 compliance with applicable requirements or permit conditions; and
- 5 (b) Dates by which those steps or actions are to be taken.
- 6 (4) Monitoring requirements. Any swine operation may be subject to
- 7 monitoring requirements including, but not limited to, the following:
- 8 (a) The type, installation, use and maintenance of monitoring equip-
- 9 ment;
- 10 (b) Monitoring or sampling methodology, frequency and locations;
- 11 (c) Monitored substances or parameters;
- 12 (d) Testing and analytical procedures; and
- 13 (e) Reporting requirements including both frequency and form.
- 14 (5) All large and extra large operations shall have a closure plan as
- 15 approved by the director.

16 25-4109. PERMIT AMENDMENTS. (1) Minor amendments are those that do not
17 have the potential to adversely impact the environment and shall be approved
18 by the director. Minor amendments are generally limited to:

- 19 (a) The correction of typographical errors;
- 20 (b) Transfer of ownership or operational control in accordance with the
- 21 provisions of this chapter; or
- 22 (c) Certain minor changes in monitoring or operational conditions.
- 23 (2) All amendments not considered minor shall be considered major
- 24 amendments. The procedure for making major modifications shall be the same
- 25 as that used for a new permit.

26 25-4110. TRANSFER OF PERMITS. (1) A new owner or operator of a swine
27 operation shall submit a transfer application to the director that includes
28 at least the following:

- 29 (a) Name and address of the new owner; and
- 30 (b) Demonstration that any financial assurance required by this chap-
- 31 ter remains valid and available for remediation and closure costs of the
- 32 operation.
- 33 The director shall review the financial assurance demonstration and within
- 34 thirty (30) days of its receipt either approve the transfer or, if such
- 35 demonstration is not adequate, deny the transfer.
- 36 (2) An approved permit transfer shall be a minor amendment.
- 37 (3) A notification of a permit transfer denial shall set forth the rea-
- 38 sons for the denial, steps necessary to meet the requirements for a permit
- 39 transfer and the opportunity for the applicant to request a hearing.
- 40 (4) The new permittee shall assume all rights and responsibilities of
- 41 the transferred permit.

42 25-4111. NUTRIENT MANAGEMENT RECORDKEEPING. The owner or operator of
43 a swine operation that is required to have a nutrient management plan shall
44 maintain accurate records. These records shall include at a minimum:

- 45 (1) Regulatory soil samples that have been taken on cropland owned or
- 46 operated as described in the swine operation's nutrient management plan.
- 47 Samples shall be taken by a certified soil sampler and tested by a laboratory

1 that meets the requirements and performance standards of the North American
2 proficiency testing program, as part of nutrient management standard 590 or
3 other methods as approved by the department;

4 (2) Annual soil analysis;

5 (3) The date and amount of manure and commercial fertilizer applied to
6 individual swine operation owned or operated fields;

7 (4) The date(s) that manure was exported, number of acres to which the
8 manure is applied, the amount of manure exported and to whom the manure was
9 exported; and

10 (5) Actual crop yields on owned or operated fields.

11 25-4112. FEES TO BE COLLECTED FOR PERMITTED SWINE OPERATIONS. (1) The
12 department may levy a fee on permitted swine operations for the purpose of
13 carrying out the provisions of this chapter and rules promulgated hereunder.

14 (2) Fees collected shall be used for costs related to the implementa-
15 tion of the provisions of this chapter.

16 (3) Fees shall be levied on a uniform basis in an amount reasonably nec-
17 essary to cover the cost of the inspection program and the administration of
18 the department of agriculture swine program. The department shall adjust
19 the fees to be collected under the provisions of this section as necessary to
20 meet the expenses of the inspections.

21 (4) Fees may not exceed twenty-five cents (25¢) per swine marketed.

22 (5) The person responsible for the marketing of swine shall be respon-
23 sible for the monthly payment of the fees and a summary of the number of swine
24 marketed. The fees accrued in any given month are due and payable no later
25 than the twentieth day of the following month.

26 (6) All fees collected or received by the department under the provi-
27 sions of this chapter shall be deposited in the "Swine Inspection Fund,"
28 which fund is hereby created in the state treasury. Interest earned on
29 the investment of idle moneys in the fund shall be paid to the fund. All
30 moneys deposited in the fund are hereby continuously appropriated to the
31 Idaho state department of agriculture to be used in the inspections required
32 pursuant to the provisions of this chapter.

33 (7) Past due fees shall be charged interest at the state approved rate.

34 (8) The department is authorized to audit the permittee for verifica-
35 tion of the number of swine marketed.

36 25-4113. DESIGNATION. (1) The director may, on a case-by-case basis,
37 designate a swine feeding operation as follows:

38 (a) A small swine operation may be designated as a medium swine opera-
39 tion and will be required to follow all permit requirements for a medium
40 swine operation if it is determined the operation is a significant con-
41 tributor of pollutants to waters of the state;

42 (b) A medium swine operation may be designated as a large swine opera-
43 tion and will be required to follow all permit requirements for a large
44 swine operation if:

45 (i) There is an unauthorized discharge into waters of the state
46 through a manmade ditch, flushing system, or other similar manmade
47 device;

(ii) There is an unauthorized discharge directly into waters of the state that originate outside of and pass over, across or through the swine operation or otherwise come into direct contact with the animals confined in the operation; or

(iii) There are repeated instances of noncompliance;

(2) The designation shall be provided to the operator of the swine feeding operation in writing, setting forth the basis for the director's decision;

(3) The director shall consider the following factors when deciding whether to designate a swine feeding operation:

(a) Size of the swine feeding operation and the amount of manure, process wastewater and runoff reaching waters of the state;

(b) Location of the swine feeding operation relative to waters of the state;

(c) Means of conveyance of manure, process wastewater and runoff into waters of the state; and

(d) Slope, vegetation, precipitation and other factors affecting the likelihood or frequency of discharge of manure, process wastewater or runoff into waters of the state;

(4) Upon request by the operator, the director shall redesignate a swine operation previously designated under the provisions of subsection (1) of this section, if the swine operation has made sufficient remedial modifications as determined by the director. Such redesignation shall be provided to the operator in writing and any fees paid by the operation due to the designation will not be refundable to the operation.

25-4114. AUTHORITY TO PROMULGATE RULES. (1) The legislature finds that swine operations require adequate control through state regulatory mechanisms in order to prevent such operations from posing a threat to the state's surface and ground water resources. The department of agriculture is in the best position to administer and implement rules to provide an adequate regulatory framework for swine feeding operations.

(2) The director is authorized to modify the department's administrative rules and to make new rules for permitting and regulating swine operations.

25-4115. VIOLATIONS. (1) The failure by a permittee to comply with the provisions of this chapter, rules promulgated hereunder or with any permit condition, shall be deemed a violation.

(2) Any person who knowingly makes a false statement, representation or certification in any application, report, document or record developed, maintained, or submitted pursuant to the provisions of this chapter or the conditions of a permit shall be deemed to have committed a violation.

(3) Any unauthorized discharge from a swine operation shall be deemed a violation.

(4) Any person violating any provision of this chapter, the rules, permit or orders issued shall be liable for a civil penalty as set forth in section 25-4116, Idaho Code.

(5) The director may revoke a permit for:

(a) A material violation of any condition of a permit; or

1 (b) If the permit was obtained by misrepresentation or failure to dis-
2 close all relevant facts.

3 (6) Prior to revoking a permit, the director shall issue a notice of
4 intent to revoke, which shall become final unless the permittee timely
5 requests an administrative hearing in writing. Such hearing shall be con-
6 ducted in accordance with the provisions of chapter 52, title 67, Idaho Code.

7 25-4116. CIVIL PENALTIES. Any person determined in an action con-
8 ducted under the provisions of chapter 52, title 67, Idaho Code, to have
9 violated any provision of this chapter, rules promulgated hereunder, or any
10 permit or order issued, shall be liable for a civil penalty not to exceed ten
11 thousand dollars (\$10,000) per violation, or one thousand dollars (\$1,000)
12 for each day of a continuing violation. Moneys collected for violations
13 shall be deposited in the state treasury and credited to the state school
14 building fund. The imposition or computation of monetary penalties shall
15 take into account the seriousness of the violation, good faith efforts to
16 comply with the law, the economic impact of the penalty on the violator, the
17 economic benefit, if any, of the violation and such other matters as justice
18 requires.

19 25-4117. FINANCIAL ASSURANCES FOR LARGE SWINE OPERATIONS. The owner
20 of a large swine operation shall submit, as part of the permit application:

21 (1) A bond, or equivalent financial assurance mechanisms as provided in
22 section 25-4118(2), Idaho Code, in the amount of one hundred thousand dol-
23 lars (\$100,000); and

24 (2) A closure plan for the swine operation as approved by the director.

25 25-4118. FINANCIAL ASSURANCES FOR EXTRA LARGE SWINE OPERATIONS. (1)
26 The owner of an extra large swine operation shall submit, as part of the per-
27 mit application, a detailed written estimate in current dollars of the cost
28 of hiring a third party to:

29 (a) Remediate potential contamination caused by the operation of the
30 swine facility or of any potential spill or breach, including, without
31 limitation, remediation pursuant to the swine operation's spill con-
32 tingency plan; and

33 (b) Close the swine operation in accordance with an approved closure
34 plan.

35 The department must approve the cost estimate as reasonable prior to the is-
36 suance of a permit.

37 (2) Financial assurance mechanisms. The owner shall submit, as part
38 of the permit application, evidence of financial assurance to cover the ap-
39 proved remediation and closure cost estimates. Provided however, if the de-
40 partment has previously determined that a complete application has been sub-
41 mitted, the owner shall submit the remediation and closure cost estimates
42 and financial assurance mechanism to the department for approval prior to
43 the issuance of a permit. The mechanism used to demonstrate financial assur-
44 ance shall be submitted to the department for approval and shall ensure that
45 the funds necessary to meet the approved costs of remediation and closure
46 shall be available whenever they are needed. The financial assurance mech-
47 anisms allowed for swine operations shall include any mechanism or a combi-

1 nation of mechanisms meeting the criteria set forth below or other mechanism
2 approved by the department.

3 (a) Trust fund.

4 (i) An owner may satisfy the requirements by establishing a trust
5 fund and submitting an originally signed duplicate of the trust
6 agreement to the department. The trustee must be an entity that
7 has the authority to act as a trustee and whose trust operations
8 are regulated and examined by a federal or state agency;

9 (ii) After the trust fund is established, whenever the current re-
10 mediatement and closure cost estimates change, the owner must com-
11 pare the new estimates with the trustee's most recent annual valu-
12 ation of the trust fund. If the value of the fund is less than the
13 amount of the new estimate, the owner, within sixty (60) days after
14 the change in the cost estimate, must either deposit an amount into
15 the fund so that its value after the deposit is at least equal to
16 the amount of the current remediation or closure cost estimate, or
17 obtain other financial assurance as specified in this subsection
18 to cover the difference;

19 (iii) If the value of the trust fund is greater than the total
20 amount of the current remediation or closure cost estimate, the
21 owner may submit a written request to the department for release
22 of the amount in excess of the current remediation or closure cost
23 estimate;

24 (iv) If an owner substitutes other financial assurance as spec-
25 ified in this subsection for all or part of the trust fund, he
26 may submit a written request to the department for release of
27 the amount in excess of the current remediation or closure cost
28 estimate covered by the trust fund.

29 (b) Surety bond.

30 (i) An owner may satisfy the requirements by obtaining a payment
31 or performance surety bond and submitting a certified copy of the
32 bond to the department. The surety company issuing the bond must,
33 at a minimum, be among those listed as acceptable sureties on fed-
34 eral bonds in circular 570 of the U.S. department of the treasury;

35 (ii) The penal sum of the bond must be in an amount at least equal
36 to the current remediation and closure cost estimates;

37 (iii) Under the terms of the bond, the surety shall become liable
38 on the bond obligation when: (1) the owner fails to perform as
39 guaranteed by the bond; or (2) the department notifies the owner
40 that he has failed to meet requirements as provided by this chap-
41 ter;

42 (iv) Under the terms of the bond, the surety may cancel the bond by
43 sending notice of cancellation by certified mail to the owner and
44 the department one hundred twenty (120) days in advance of cancel-
45 lation. Cancellation may not occur, however, during the one hun-
46 dred twenty (120) days beginning with the date of receipt of the
47 notice by the department, as evidenced by the return receipt. The
48 surety shall remain liable on the bond for cost of remediation and
49 closure unless the owner obtains a replacement financial assur-

ance mechanism, approved by the department, that covers both the existing and future costs of remediation and closure.

(c) Letter of credit.

(i) An owner may satisfy the requirements by obtaining an irrevocable standby letter of credit and submitting a certified copy of the letter to the department. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency;

(ii) The letter of credit shall be accompanied by a letter from the owner referring to the letter of credit by number, issuing institution and date, and providing the following information: the type of swine operation, name and address of the swine operation and the amount of funds assured for remediation and closure of the swine operation by the letter of credit;

(iii) The letter of credit shall be irrevocable and issued for a period of at least one (1) year. The letter of credit shall provide that the expiration date shall be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner and the department by certified mail of a decision not to extend the expiration date. Cancellation may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by the department, as evidenced by the return receipt. The issuing institution shall remain liable on the letter of credit for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the department, that covers both the existing and future costs of remediation and closure;

(iv) The letter of credit must be issued in an amount at least equal to the current remediation and closure cost estimates.

(d) Insurance.

(i) An owner may satisfy the requirements by obtaining remediation and closure insurance and submitting a certificate of such insurance to the department. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states;

(ii) The insurance policy must be issued for a face amount at least equal to the current remediation and closure cost estimates. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments;

(iii) Each insurance policy must contain a provision allowing assignment of the policy to a successor. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused;

(iv) The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of

the expiring policy. The insurer may cancel the policy by sending notice by certified mail to the owner and the department one hundred twenty (120) days in advance. Cancellation may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by the department, as evidenced by the return receipt. The insurer shall remain liable on the policy for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the department, that covers both the existing and future costs of remediation and closure.

(e) Corporate guarantee.

(i) An owner may satisfy the requirements by obtaining a written guarantee and submitting a certified copy of the guarantee and appropriate letter from the guarantor. The guarantor must be the direct or higher-tier parent corporation of the owner, a firm whose parent corporation is also the parent corporation of the owner, or a firm with a substantial business relationship with the owner;

(ii) If the guarantor's parent company is also the parent corporation of the owner, a letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee;

(iii) If the guarantor is a firm with a substantial business relationship with the owner, the letter must describe the substantial business relationship and the value received in consideration of the guarantee;

(iv) The terms of the guarantee shall provide that if the owner fails to perform remediation or closure of a swine operation covered by the guarantee, the guarantor shall: (1) perform, or pay a third party to perform, remediation and closure as required; or (2) establish a fully funded trust fund as specified in paragraph (a) of this subsection in the name of the owner;

(v) The guarantee shall remain in force for as long as the owner must comply with the applicable financial assurance requirements, unless the guarantor sends notice of cancellation by certified mail to the owner and to the department one hundred twenty (120) days in advance. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice by the department, as evidenced by the return receipt. The guarantor shall remain liable on the guarantee for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the department, that covers both the existing and future costs of remediation and closure.

(f) If a financial assurance mechanism is canceled by the issuing entity, the owner shall obtain alternate financial assurance, within sixty (60) days of receipt of notice of cancellation by the department, which shall be submitted to the department for approval. The alternate financial assurance must become effective not later than the effective date of cancellation or termination of the existing financial assur-

1 ance. An owner may cancel a financial assurance mechanism only after
2 first obtaining an alternative mechanism approved by the department.

3 (3) Continuous coverage. The owner shall provide continuous cover-
4 age for remediation and closure until released from financial assurance
5 requirements by the department.

6 (4) Adjustment of financial assurance amounts. The following provi-
7 sions apply to the adjustment of the amount of financial assurance:

8 (a) The owner shall increase the remediation and closure cost estimates
9 and the amount of financial assurance if changes to the closure plan or
10 swine operation conditions or operations increase the cost estimates at
11 any time during the active life of the swine operation. The cost esti-
12 mates and financial assurance shall also be adjusted to reflect infla-
13 tion. Increased cost estimates and financial assurance shall be sub-
14 mitted to the department for approval;

15 (b) The owner may reduce the remediation and closure cost estimates and
16 the amount of financial assurance if the cost estimates exceed the max-
17 imum cost of remediation or closure at any time during the active life
18 of the swine operation. The owner shall first notify the department and
19 obtain its approval of the justification for the reduction of the reme-
20 diation and closure cost estimates.

21 (5) Release from financial assurance requirements. When remediation
22 and closure conditions required by a permit are complete, financial assur-
23 ance shall be released by the department as follows:

24 (a) When the department determines that initial closure activities
25 have been completed, financial assurance, less identified retainages,
26 shall be released;

27 (b) A sufficient amount of financial assurance shall be retained by the
28 department, up to five (5) years after closure, to ensure proper remedi-
29 ation and closure of a swine operation;

30 (c) Release of any amount of financial assurance shall not release
31 the owner from any responsibility for meeting remediation or closure
32 requirements.

33 (6) Owner liability. Nothing in this section shall relieve the owner of
34 liability for remediation and closure costs. The use of all financial assur-
35 ance shall not relieve the owner from responsibility and liability for reme-
36 diation and closure costs.

37 25-4119. SITING REQUIREMENTS FOR EXTRA LARGE SWINE OPERATIONS. Any
38 applicant for a permit for an extra large swine operation, as required
39 pursuant to the provisions of this chapter, shall also comply with the
40 provisions of chapter 42, title 25, Idaho Code.

41 25-4120. PUBLIC RECORDS ACT -- RECORDS. Information obtained by a pub-
42 lic agency pursuant to this chapter or its associated rules is subject to
43 public disclosure pursuant to the provisions of chapter 3, title 9, Idaho
44 Code.

45 25-4121. SEVERABILITY. If any provision of this chapter or its appli-
46 cation to any person or circumstance is held invalid, the invalidity does not
47 affect other provisions or applications of this chapter which can be given

1 effect without the invalid provision or application, and to this end the pro-
 2 visions of this chapter are severable.

3 25-4122. CONFLICTS. If a conflict arises between this chapter and
 4 rules of the department regulating swine operations, the most restrictive
 5 provision shall apply.

6 SECTION 3. That Title 25, Idaho Code, be, and the same is hereby amended
 7 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
 8 ter 42, Title 25, Idaho Code, and to read as follows:

9 CHAPTER 42

10 LOCAL OPTION EXTRA LARGE SWINE OPERATIONS SITING ACT

11 25-4201. SHORT TITLE. This chapter shall be known as the "Local Option
 12 Extra Large Swine Operations Siting Act."

13 25-4202. LEGISLATIVE FINDINGS AND PURPOSES. (1) The legislature finds
 14 that:

15 (a) The swine industry is experiencing rapid changes such as increased
 16 sophistication of production technology, increased demand for capital
 17 to maintain or expand operations, consolidation of production and pack-
 18 ing facilities and changing consumer demands and markets;

19 (b) Extra large swine operations increase social and environmental im-
 20 pacts in the areas where these facilities are located;

21 (c) Adverse environmental impacts can result from the improper siting
 22 of extra large swine operations, therefore, the need for establishing
 23 safe sites with adequate supplies of natural resources, such as water,
 24 and adequate capacities for the disposal of animal waste is a matter of
 25 statewide concern;

26 (d) Chapter 41, title 25, Idaho Code, vests the Idaho state department
 27 of agriculture with the responsibility to make rules regulating extra
 28 large swine operations.

29 (2) (a) To facilitate extra large swine operation siting decisions by
 30 boards of county commissioners and governing bodies of cities, the pro-
 31 visions of this chapter establishes a review process within the depart-
 32 ment for construction or expansion of extra large swine operations and
 33 to require approval of sites.

34 (b) The procedures and requirements established in this chapter are
 35 necessary to facilitate the proper siting of extra large swine opera-
 36 tions, to effect timely and responsible completion of statutory duties
 37 and to ensure protection of natural resources, private property values
 38 and the environment of the state.

39 (c) The site approval required in this chapter is required in addition
 40 to any other license, permit or approval required by law or rule.

41 (3) It is the intent of the legislature that this chapter shall be ap-
 42 plied only to extra large swine operations as provided in chapter 41, title
 43 25, Idaho Code, and shall not be applied to any other confined animal feeding
 44 operations.

1 25-4203. DEFINITIONS. In addition to the definitions provided in this
 2 section, the definitions as used in chapter 41, title 25, Idaho Code, shall
 3 apply to this chapter regarding extra large swine operations.

4 As used in this chapter:

5 (1) "Active unit" means that part of an operation or unit that has re-
 6 ceived or is receiving wastes and that has not been closed;

7 (2) "Applicant" means the owner or the operator with the owner's writ-
 8 ten consent;

9 (3) "Aquifer" means a geological formation, group of formations, or a
 10 portion of a formation capable of yielding significant quantities of ground
 11 water to wells or springs;

12 (4) "Ground water" means water below the land surface in a zone of satu-
 13 ration;

14 (5) "Holocene fault" means a fault characterized as a fracture or a zone
 15 of fractures in any material along which strata on one (1) side have been dis-
 16 placed with respect to that on the other side and holocene being the most
 17 recent epoch of the quaternary period, extending from the end of the pleis-
 18 tocene epoch to the present;

19 (6) "One-time animal unit capacity" means the maximum number of animal
 20 units that a facility is capable of housing at any given point in time;

21 (7) "Operate" means to confine, feed, propagate, house or otherwise
 22 sustain swine;

23 (8) "Operator" means the person(s) responsible for the overall opera-
 24 tion of a facility or part of a facility; and

25 (9) "Owner" means the person(s) who owns a facility or part of a facil-
 26 ity.

27 25-4204. SITE APPROVAL REQUIRED -- SITE APPROVAL IS SUPPLEMENTAL --
 28 LOCAL OPTION -- LOCAL ACTION REQUIRED FOR DEPARTMENT ACTION. (1) No person
 29 may construct or expand an extra large swine operation regulated by the pro-
 30 visions of this chapter without first obtaining site approval from the di-
 31 rector as provided in this chapter. For purposes of this chapter, reference
 32 to "operation" or "operations" shall be a reference to extra large swine op-
 33 erations.

34 (2) The site approval required by the provisions of this chapter
 35 for construction or expansion of an operation is required in addition to
 36 requirements of any rules of the department or applicable provisions of
 37 chapter 41, title 25, Idaho Code. Further, the site approval required by
 38 this chapter must be obtained in addition to any other license, permit or
 39 approval required by law or rule.

40 (3) This chapter does not preempt the local regulation of extra large
 41 swine operations. This chapter provides boards of county commissioners and
 42 governing bodies of cities with an optional procedure for siting extra large
 43 swine operations. If boards of county commissioners and governing bodies
 44 of cities do not exercise their option to comply with the provisions of this
 45 chapter, they are not subject to its provisions and may exercise individual
 46 authority to accept, regulate or reject extra large swine operations inde-
 47 pendently of this chapter.

48 (4) This chapter applies only if the board of county commissioners or
 49 governing body of a city, whichever has jurisdiction over the site for a pro-

posed operation, chooses to comply with this chapter. If a board of county commissioners or a governing body of a city with jurisdiction chooses not to comply with this chapter, the department is not required to take any action under this chapter.

(5) Boards of county commissioners and governing bodies of cities that choose to comply with this chapter shall signify compliance by resolution or ordinance communicated to the director in writing.

(6) If a board of county commissioners or a governing body of a city chooses to comply with this chapter, the department does not have to issue any determination relating to the suitability of the location of an operation.

25-4205. APPLICATION -- OPERATIONS REGULATED. (1) Extra large swine operations, as provided for in chapter 41, title 25, Idaho Code, must obtain site approval pursuant to the provisions of this chapter.

(2) As provided by law, where two (2) or more operations are considered by the department as a single operation, the director shall determine whether one (1) or multiple site approvals are required.

(3) (a) Existing extra large swine operations built and in operation one (1) year or more before the original effective date of this chapter are exempt from the requirement to obtain a site approval pursuant to this chapter unless they expand. However, such operations shall register with the director within three (3) months after the original effective date of this chapter. The director shall determine the information that must be submitted as part of their registration.

(b) Existing extra large swine operations, required in this subsection to register with the director, shall submit a nutrient management plan and closure plan to the director for approval within two (2) years of the original effective date of this chapter in accordance with rules of the department. An application fee shall not be required unless the operation is expanding.

25-4206. DIRECTOR MAY MAKE RULES AND CONTRACT WITH OTHER AGENCIES. (1) The director may adopt administrative rules he deems necessary or helpful to carry out the purposes of this chapter.

(2) The director may enter into contracts, agreements, memorandums and other arrangements with federal, state and local agencies to carry out the purposes of this chapter.

25-4207. LOCATION GUIDELINES. This section provides location guidelines for extra large swine operations regulated by this chapter. Where the location guidelines provide a specific setback distance, that distance is the minimum setback distance that may be imposed. Further setback distances shall be imposed as circumstances require.

(1) An extra large swine operation regulated by this chapter shall not:

(a) Locate its closest waste facility within at least two (2) miles of any occupied residence not owned or leased by the owner or operator of the operation;

1 (b) Land apply liquid animal waste within at least one (1) mile of the
2 nearest corner of an occupied residence not owned or leased by the owner
3 or operator of the operation.

4 (2) The setback distances provided in subsection (1) of this section do
5 not apply if the affected property owner executes a written waiver with the
6 owner or operator of the operation, under terms and conditions that the par-
7 ties may negotiate. The written waiver is effective when recorded in the of-
8 fices of the recorder of deeds in the county in which the property is located.
9 The recorded waiver shall preclude enforcement of the setback distances con-
10 tained in subsection (1) of this section. A change in ownership of the ap-
11 plicable property or change in ownership of the operation does not affect the
12 validity of the waiver.

13 (3) All distances between occupied residences and operations shall be
14 measured from the closest corner of the walls of the occupied residence to
15 the closest point of the nearest waste structure or waste facility, as de-
16 fined by the director.

17 (4) No liquid animal waste may be land applied within at least one hun-
18 dred (100) feet of an existing public or private drinking water well.

19 (5) The minimum distance from a waste structure or waste facility to a
20 domestic well, public well or public water source shall be at least one (1)
21 mile.

22 (6) Further, operations shall not be located:

23 (a) In areas designated by the United States fish and wildlife service
24 or the Idaho department of fish and game as critical habitat for endan-
25 gered or threatened species of plants, fish or wildlife;

26 (b) So as to be at variance with any locally adopted land use plan or
27 zoning requirement, unless otherwise provided by local law or ordi-
28 nance. If no land use plan has been adopted by the local government that
29 would have land use jurisdiction pursuant to chapter 65, title 67, Idaho
30 Code, the recommendations of the panel approving a site shall contain an
31 analysis of the requirements and guidelines provided in this chapter.
32 The analysis shall be accompanied by findings and conclusions, entered
33 by the local government with jurisdiction after the local government
34 has held a public hearing in accord with section 67-6509, Idaho Code,
35 that the public interest would be served by locating an operation on the
36 site for which approval is sought;

37 (c) No nearer than one (1) mile to any local, state or national park, or
38 land reserved or withdrawn for scenic or natural use; and

39 (d) No nearer than two (2) miles to a school, church, hospital or commu-
40 nity center.

41 (7) An operation active unit shall not be located:

42 (a) Within a one hundred (100) year flood plain;

43 (b) Within five hundred (500) feet upstream of a perennial stream or
44 river;

45 (c) Within one thousand (1,000) feet of any perennial lake or pond;

46 (d) So as to cause any measurable impact on water quality limited
47 streams;

48 (e) Within a wetland;

49 (f) Within two hundred (200) feet to the property line of adjacent land;

1 (g) Within two hundred (200) feet of a holocene fault or adjacent to
2 geologic features that could compromise the structural integrity of an
3 operation active unit unless the owner or operator demonstrates to the
4 director that an alternative setback distance of less than two hundred
5 (200) feet will prevent damage to the structural integrity of the opera-
6 tion unit and will be protective of the environment. For the purposes of
7 this subsection:

8 (i) "Fault" means a fracture or a zone of fractures in any mate-
9 rial along which strata on one (1) side have been displaced with
10 respect to that on the other side;

11 (ii) "Displacement" means the relative movement of any two (2)
12 sides of a fault measured in any direction;

13 (iii) "Holocene" means the most recent epoch of the quaternary
14 period, extending from the end of the pleistocene epoch to the
15 present.

16 (h) Within seismic impact zones, unless the owner or operator demon-
17 strates to the director that all operation active units and surface wa-
18 ter control systems, are designed to resist the maximum horizontal ac-
19 celeration in lithified earth material for the site. The owner or oper-
20 ator must place the demonstration in the operating record and notify the
21 director that it has been placed in the operating record. For the pur-
22 poses of this section:

23 (i) "Seismic impact zone" means an area with a ten percent (10%)
24 or greater probability that the maximum horizontal acceleration
25 in lithified earth material, expressed as a percentage of the
26 earth's gravitational pull (g), will exceed one-tenth (0.10g) in
27 two hundred fifty (250) years;

28 (ii) "Maximum horizontal acceleration in lithified earth mate-
29 rial" means the maximum expected horizontal acceleration depicted
30 on a seismic hazard map, with a ninety percent (90%) or greater
31 probability that the acceleration will not be exceeded in two hun-
32 dred fifty (250) years, or the maximum expected horizontal accel-
33 eration based on a site-specific seismic risk assessment;

34 (iii) "Lithified earth material" means all rock, including all
35 naturally occurring and naturally formed aggregates or masses of
36 minerals or small particles of older rock that formed by crys-
37 tallization of magma or by induration of loose sediments. This
38 term does not include manmade materials, such as fill, concrete
39 and asphalt, or unconsolidated earth materials, soil or regolith
40 lying at or near the earth's surface.

41 (i) On any site whose natural state would be considered unstable in that
42 its undisturbed character would not permit establishment of an opera-
43 tion without unduly threatening the integrity of the design due to in-
44 herent site instability;

45 (j) Where the integrity of the site would be compromised by the presence
46 of ground water which would interfere with construction or operation of
47 the active unit.

1 25-4208. SITE REVIEW PANELS ESTABLISHED. (1) A site review panel shall
2 be established to ensure public input in the siting process and to recommend
3 to the director site approval, approval with conditions or rejection.

4 (2) A panel shall consist of eight (8) members to be appointed as fol-
5 lows:

6 (a) Three (3) members shall be the director of the department of
7 agriculture or his designee, the director of the department of water
8 resources or his designee, and the director of the department of envi-
9 ronmental quality or his designee.

10 (b) One (1) member shall be a public member appointed by the governor.
11 The public member shall be an environmental professional, shall serve
12 as chairman of the panel and shall be a voting member. A member who
13 is a public member shall be appointed to serve on site review panels
14 only until the particular site application subject to their review is
15 approved, or until the application is rejected and is no longer subject
16 to their review.

17 (c) Two (2) members shall be appointed by the city council of the city
18 located closest to, or in which the operation is proposed to be located
19 or expanded, provided the governing body of the city has signified com-
20 pliance with this chapter as provided in section 25-4204, Idaho Code.
21 At least one (1) member shall be a resident of the city. However, if two
22 (2) cities are equidistant from the proposed or expanding operation,
23 plus or minus five (5) miles, the city council of each city shall appoint
24 one (1) member each to the site review panel, each of whom shall be a
25 resident of the city appointing them. The members serving pursuant
26 to this subsection shall serve until the particular site application
27 subject to their review is approved or is rejected and is no longer
28 subject to their review.

29 (d) Two (2) members shall be appointed by the county commission and be
30 residents of the county where the operation is proposed to be located or
31 expanded, provided the board of county commissioners has signified com-
32 pliance with this chapter as provided in section 25-4204, Idaho Code.
33 The members serving pursuant to this subsection shall serve until the
34 particular site application subject to their review is approved, or un-
35 til the application is rejected and is no longer subject to their re-
36 view.

37 (e) A person nominated to represent a city or county shall not have a
38 conflict of interest, as that term is defined in section 59-703, Idaho
39 Code, or derive any economic gain as that term is defined in section
40 59-703, Idaho Code, from the location of the proposed or expanding
41 operation.

42 (3) The director shall notify the city council of the nearest city, or
43 cities if two (2) cities are within five (5) miles of the site of the pro-
44 posed operation, and the board of county commissioners in which the site is
45 located, of a site application filed with the department and shall instruct
46 the city or cities and county to appoint the necessary members to a panel.

47 (4) A majority of members of the panel shall constitute a quorum for the
48 transaction of business of the panel and the concurrence of a majority of the
49 panel shall constitute a legal action of the panel, provided that no meeting
50 of the panel shall occur unless there are at least as many members present

1 representing the city and county as there are representing the state and the
 2 public as appointed pursuant to subsection (2) (a) and (b) of this section.
 3 All meetings of the panel shall be conducted pursuant to the state open meet-
 4 ing law.

5 (5) The director shall make staff available to assist the panel in car-
 6 rying out its responsibilities.

7 (6) Members of the panel who are not state employees shall be entitled
 8 to receive compensation as provided in section 59-509(b), Idaho Code.

9 25-4209. SITING APPLICATION. (1) Each application shall include in-
 10 formation in sufficient detail to allow the director to make necessary ap-
 11 plication review decisions concerning design and environmental protection.
 12 Each application shall include:

13 (a) Name, mailing address and telephone number of the operation owner;

14 (b) Name, mailing address and telephone number of the operation opera-
 15 tor;

16 (c) Name and mailing address of the operation;

17 (d) Legal description of the operation's location;

18 (e) The legal structure of the entity owning the operation, including
 19 the names and addresses of all directors, officers, registered agents
 20 and partners;

21 (f) The names and locations of all operations owned and/or operated by
 22 the applicant within the last ten (10) years;

23 (g) The one-time animal capacity of the operation;

24 (h) The type of swine to be confined at the operation;

25 (i) Evidence that a valid water right exists to supply adequate water
 26 for the proposed operation or a copy of either an application for permit
 27 to appropriate water or an application to change the point of diversion,
 28 place, period and nature of use of an existing water right that has been
 29 filed with the Idaho department of water resources which, if approved,
 30 will supply adequate water for the proposed operation;

31 (j) Proof of financial capability to perform remedial actions and to
 32 meet the conditions of an approved closure plan for the operation, in
 33 accordance with the provisions of chapter 41, title 25, Idaho Code;

34 (k) The operation's biosecurity and sanitary standards;

35 (l) A statement of estimated annual income and operating expenses that
 36 demonstrates, to the satisfaction of the department, financial capa-
 37 bility to operate the operation.

38 (2) The application must also include construction plans and construc-
 39 tion specifications for the operation's wastewater storage and containment
 40 facilities with the following information:

41 (a) Vicinity map(s) prepared on one (1) or more seven and one-half
 42 minute (7.5') USGS topographic quadrangle maps or a high quality repro-
 43 duction(s) that includes the following:

44 (i) Layout of the operation, including buildings and wastewater
 45 storage and containment facilities;

46 (ii) The one hundred (100) year FEMA flood zones or other appro-
 47 priate flood data for the site and land application sites owned or
 48 leased by the applicant;

(iii) The location of occupied dwellings, public and private gathering places, such as schools, churches and parks, and incorporated municipalities that are within a two (2) mile radius of the operation; and

(iv) Private and community domestic water wells, irrigation wells, irrigation conveyance and drainage structures, monitoring wells, wetlands, streams, springs and reservoirs that are within a one (1) mile radius of the operation.

(b) Construction specifications including:

(i) A site plan showing building locations; waste facilities; all waste conveyance systems; and all irrigation systems used for land application, including details of approved water supply protection devices;

(ii) Building plans showing: all wastewater collection systems in housed units; all freshwater supply systems, including details of approved water supply protection devices; detailed drawings of wastewater collection and conveyance systems and containment construction; and detailed construction and installation procedures.

(3) A site characterization of the operation and any land application site(s) owned or operated by the applicant, prepared by a registered professional geologist, a registered professional engineer or a qualified ground water hydrologist, shall be provided that includes the following information:

(a) A description of monitoring methods, frequency and reporting components related to either leak detection systems and/or ground water monitoring wells;

(b) The climatic, hydrogeologic and soil characteristics;

(c) The depth to water and a potentiometric map for the uppermost and regional aquifer;

(d) The vertical and horizontal conductivity, gradient, and ground water flow direction and velocity;

(e) Estimates of recharge to the uppermost aquifer;

(f) Information that characterizes the relationship between the ground water and adjacent surface waters; and

(g) A summary of local ground water quality data.

(4) Each extra large operation shall provide a closure plan describing the procedures for final closure of an operation that ensures no adverse impacts to the environment and waters of the state and that includes:

(a) The estimated length of operation; and

(b) A description of the procedures, methods and schedule to be implemented at the operation for final disposal, handling, management and/or treatment of all animal waste.

(5) An applicant shall provide any other information deemed necessary by the director to assess protection of the environment.

25-4210. DUTIES OF THE DIRECTOR RELATIVE TO APPLICATIONS. (1) Upon determination that a siting application is complete, the director shall:

(a) Notify the permanent panel members, the city and/or county in which the operation site is located, the director of the department of fish

1 and game, the director of the department of law enforcement and other
2 state agencies as deemed appropriate by the director.

3 (b) Publish a notice that the application has been received, as pro-
4 vided in section 60-109, Idaho Code, in a newspaper having major circu-
5 lation in the county and the immediate vicinity of the site. The notice
6 shall contain a map indicating the location of the site, a description
7 of the proposed action and the location where the application may be re-
8 viewed. The notice shall describe the procedure by which the siting ap-
9 proval under this chapter may be granted.

10 (2) Upon notification by the director, the chairman shall immediately
11 notify the representatives of the state to the panel and the public members.
12 The chairman shall also notify the applicable county and city for their ap-
13 pointment of members as provided in section 25-4208(2), Idaho Code. Within
14 thirty (30) days after the notification, the board of commissioners of the
15 county and the city council shall select the members to serve on the panel.
16 The panel shall be created at that time and notification of the creation of
17 the panel shall be made to the chairman.

18 (3) Within thirty (30) days after appointment of panel members, the
19 panel shall meet to review and establish a timetable for the consideration of
20 the draft site approval.

21 (4) The panel shall:

22 (a) Set a date and arrange for publication of notice of a public hearing
23 in a newspaper having major circulation in the vicinity of the proposed
24 site, at its first meeting. The public notice shall:

25 (i) Contain a map indicating the location of the site and pro-
26 posed operation, a description of the proposed action and the lo-
27 cation where the application for a siting approval may be reviewed
28 and where copies may be obtained;

29 (ii) Identify the time, place and location for the public hearing
30 held to receive public comment and input on the application for a
31 siting approval;

32 (b) Publish the notice not less than thirty (30) days before the date of
33 the public hearing and the notice shall be, at a minimum, a twenty (20)
34 days' notice as provided in section 60-109, Idaho Code.

35 (5) Comment and input on the proposed siting of the operation may be
36 presented orally or in writing at the public hearing and shall continue to be
37 accepted in writing by the panel for thirty (30) days after the public hear-
38 ing date. The public hearing shall be held in the same county as the pro-
39 posed site. If the proposed site is adjacent to a city or populated area in
40 a neighboring county, it is recommended that public hearings also be held in
41 the neighboring county.

42 (6) The panel shall consider, but not be limited to, the following:

43 (a) The risk of the spread of disease or impact upon the environment
44 from improper treatment, storage or incineration methods;

45 (b) The impact on local units of government where the proposed opera-
46 tion is to be located in terms of the environment, safety, cost and con-
47 sistency with local planning and existing development;

48 (c) The nature of the probable environmental impact;

49 (d) The financial capability of the applicant to construct, operate and
50 close the operation;

1 (e) Impact on adjacent property values.

2 (7) The panel shall consider the concerns and objections submitted by
3 the public. The panel shall facilitate efforts to provide that the concerns
4 and objections are mitigated by proposing additional conditions regarding
5 the construction of the operation. The panel may propose conditions that in-
6 tegrate the provisions of the city or county ordinances, permits or require-
7 ments.

8 (8) Within one hundred eighty (180) days after creation, the panel
9 shall issue an approval letter, approval letter with conditions, or rejec-
10 tion. If the panel recommends conditions, a clear statement of the need for
11 a condition must be submitted to the director. If the panel recommends re-
12 jection, a clear statement of the reasons for the rejection must be submitted
13 to the director.

14 (9) The director shall not issue a permit to operate pursuant to rules
15 of the department unless a site has been approved by the site review panel.
16 Approval of a site by the panel does not require the director to issue a per-
17 mit to operate pursuant to rules of the department.

18 25-4211. FINANCIAL ASSURANCE FOR CLOSURE AND REMEDIATION. Financial
19 assurance for closure and remediation shall be pursuant to the provisions of
20 section 25-4118, Idaho Code.

21 25-4212. DIRECTOR MAY REQUEST ADDITIONAL INFORMATION. The applicant
22 shall provide the director with additional information the director deems
23 necessary to process an application, within thirty (30) days of the direc-
24 tor's request. The time period within which the director must act with re-
25 gard to an application shall be stayed until the information requested is
26 provided. If an applicant fails to provide the information within this time
27 period, unless a longer time period is allowed by the director, the director
28 may stop the application process and require the applicant to submit a new
29 application.

30 25-4213. VIOLATIONS AND ENFORCEMENT. (1) The following acts are un-
31 lawful:

32 (a) Failure to comply with the provisions of this chapter and any rules
33 of the department regulating extra large swine operations, and condi-
34 tions of site approval granted pursuant to this chapter;

35 (b) Knowingly making a false statement, representation or certi-
36 fication in any application report, document or record developed,
37 maintained or submitted pursuant to this chapter, rules or conditions
38 of a site approval.

39 (2) To ensure compliance, any person violating the provisions of this
40 chapter, or any site approval or order under this chapter, is liable for a
41 civil penalty in accordance with the provisions of section 25-4116, Idaho
42 Code.

43 (3) The director may revoke a site approval:

44 (a) For material violation of any condition of a site approval, final
45 agency order or order or judgment of a court secured by any state or fed-
46 eral agency and relating to the operation of an extra large swine opera-
47 tion;

1 (b) If an approval was obtained by misrepresentation or failure to dis-
 2 close all relevant facts;

3 (c) If approval for adequate water rights cannot be obtained from the
 4 Idaho department of water resources;

5 (d) The site or operation does not meet the requirements of this chap-
 6 ter.

7 (4) A private right of action on behalf of any person who has been in-
 8 jured or damaged by any approval authorized in this chapter or violation of
 9 the terms of any approval or rule authorized in this chapter may be main-
 10 tained in accordance with the provisions of this chapter and/or the provi-
 11 sions of chapter 52, title 67, Idaho Code, as applicable.

12 25-4214. CONFIDENTIALITY OF RECORDS. Information obtained by a public
 13 agency pursuant to this chapter or its associated rules is subject to pub-
 14 lic disclosure pursuant to the provisions of chapter 3, title 9, Idaho Code.
 15 Information submitted under a trade secret claim may be entitled to confi-
 16 dential treatment as provided in section 9-342A, Idaho Code, and rules of the
 17 department.

18 25-4215. SEVERABILITY. If any provision of this chapter or its appli-
 19 cation to any person or circumstance is held invalid, the invalidity does not
 20 affect other provisions or applications of this chapter which can be given
 21 effect without the invalid provision or application, and to this end the pro-
 22 visions of this chapter are severable.

23 25-4216. CONFLICTS. If a conflict arises between this chapter and
 24 rules of the department regulating extra large swine operations, the most
 25 restrictive provision shall apply.

26 SECTION 4. That Section [39-104A](#), Idaho Code, be, and the same is hereby
 27 repealed.

28 SECTION 5. That Chapter 79, Title 39, Idaho Code, be, and the same is
 29 hereby repealed.